THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.13536 OF 2006

04.07.2006

Between:

Kamran Mirza, S/o.A.Samad

… Petitioner

AND

The Special Officer & Competent Authority,
Urban Land Ceiling, 3rd Floor, Nampally, Hyderabad.

… Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.13536 OF 2006

ORDER:

This writ petition is filed seeking the following relief.

> For the reasons stated in the accompanying affidavit, the petitioner prays that this Hon'ble Court may be pleased to issue any Writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondent in not differing the enquiry in Urban Land Ceiling Cases bearing No.I/5481, 5489 to 5891/76 for few months till the disposal of the title dispute by the competent civil court in O.S.Nos.830/2000 and O.S.No.4330/2000 on the file of VII Junior Civil Judge, C.C.C., Hyderabad and insisting for proceeding enquiry including resolving the title dispute between the rival groups of declarants for the same property in survey No.139 of Saidabad Village and Mandal, Hyderabad District in an extent of Ac.16.16 guntas as illegal, arbitrary, capricious unwarranted and without jurisdiction and consequently to direct the respondent to differ the enquiry in the above cases till the disposal of the above suits or to pass any other order or orders.

The petitioner alleges that he is the owner of land admeasuring Acs.16.16 guntas in survey No.139 situated in Saidabad in Hyderabad. The land is governed by the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 (the Act, for brevity). It is his case that the petitioner's father purchased the property in 1963 from H.E.H. Nizam, Hyderabad and that after the Act came into force, the petitioner filed a declaration under the Act in 1976 before the second respondent. At that time, one Syed Ibrahim Quadri was disputing the title. Be that as it is, the declaration filed by the petitioner was processed and a final statement under Section 8(4) of the Act was issued on 28.1.1994 declaring the petitioner to be surplus holder of vacant land admeasuring 89,170.89 Sq.mts. The petitioner preferred an appeal, which was also dismissed on 19.8.1997. The petitioner then filed W.P.No.24268 of 1997. By order dated 28.3.2006, this Court allowed the said writ petition and remanded the matter to the

respondent for fresh disposal after affording an opportunity of being heard. When the writ petition was pending, it appears, Sri Surendranath Singh and twenty others filed an application being W.P.M.P. No.5070 of 2006 for impleading them as parties to the writ petition, claiming that they are the owners of the land in survey No.139, having got the land through a Court decree dated 29.1.1999 on the file of the Court of VII Junior Civil Judge, City Civil Court, Hyderabad in O.S.No.4463 of 1998 for specific performance against Syed Ibrahim Quadri, and obtained sale deed executed by the Court in E.P.No.54 of 1999. The petitioner thereafter filed O.S.No.830 of 2000 on the file of the Court of VII Junior Civil Judge, for cancellation of the decree and Syed Ibrahim Quadri filed O.S.No.4330 of 2000 against the petitioner claiming title to the land. These suits are pending at the stage of trial. The petitioner therefore contends that if the respondent proceeds with the enquiry under the provisions of the Act, during the pendency of the suits, it would cause prejudice to the right of the petitioner and that the respondent has no authority or jurisdiction to entertain a matter when the same is subjudised before the civil Court. Hence the present writ petition.

Heard the leaned Counsel for the petitioner and learned Assistant Government Pleader for Revenue (General).

The petitioner admittedly filed a declaration under Section 6 of the Act being J/5481, 5489 to 5491/1976 in the year 1976. The same was finalized determining surplus vacant land of 89,179.89 Sq.mts. The petitioner filed appeal under Section 33 of the Act as well as writ petition before this Court. When the writ petition was pending before this Court, Sri Surendranath Singh and others filed suit against Syed Ibrahim Quadri, who set up a hostile title. The petitioner as well as the said Syed Ibrahim Quadri also filed suits. The issue in the suits is statedly regarding title to the property. The same has no bearing on the proceedings under Act. The attention of this Court is invited to Section 42 of the Act, which gives overriding effect to the provisions of the Act notwithstanding anything inconsistent therewith in any other law for the time being in force or any custom, usage, agreement, Court decree or order of a Court. Even if the decree passed by the Court, the relief in the said suit has to be moulded in accordance with the provisions of the Act. Therefore, it is a misconception to contend that pendency of the suits by the persons setting up rival title is a bar to the proceedings before the authorities under the Act. In **Bai Dosabai v**

Mathurdas[1] the Supreme Court considered the effect of the Act on a Court decree and observed as under.

> The question for our consideration is what is the effect of the Urban Land (Ceiling & Regulation) Act, 1976 on the decree passed by the High Court. While it is true that events and changes in the law occurring during the pendency of an appeal are required to be taken into consideration in order to do complete justice between parties and so that a futile decree may not be passed. It is also right and necessary that the decree should be so moulded as to accord with the changed statutory situation. The right obtained by a party under a decree cannot be allowed to be defeated by delay in the disposal of the appeal against the decree, if it is possible to save the decree by moulding it to conform to the status subsequently coming into force. These propositions emerge from the decisions of the Court in Pasupuleti Venkateswarlu v The Motor & General Tradders (AIR 1975 SC 1409) and Rameshwar v Jot Ram [(1976) 1 SCR 847 : AIR 1976 SC 49].

The writ petition is, therefore, misconceived and is, accordingly, dismissed. No costs.

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(**V.V.S.RAO, J**)

July 04, 2006
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[1] AIR 1980 SC 1334